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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 920**

**[Doc. No. AMS-FV-13-0071; FV13-920-2 FIR]**

**Kiwifruit Grown in California; Decreased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2013-14 and subsequent fiscal periods from \$0.035 to \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee locally administers the marketing order, which regulates the handling of kiwifruit grown in California. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone:

(559) 487-5901, Fax: (559) 487-5906, or E-mail:

Kathie.Notoro@ams.usda.gov, or Martin.Engeler@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following web site:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;

or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563.

Under the marketing order, California kiwifruit handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable

kiwifruit for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1 and ends on July 31.

In an interim rule published in the **Federal Register** on October 23, 2013, and effective on October 24, 2013 (78 FR 62959, Doc. No. AMS-FV-13-0071; FV13-920-2 IR), §920.213 was amended by decreasing the assessment rate established for kiwifruit grown in California for the 2013-14 and subsequent fiscal years from \$0.035 to \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit. The decrease in assessment rate will provide sufficient revenue to meet the Committee's expenses while maintaining a financial reserve within the maximum amount permitted under the order, which is approximately one fiscal period's expense.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or

disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 178 kiwifruit growers in the production area and approximately 28 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

The California Agricultural Statistics Service, (CASS) reported total California kiwifruit production for the 2011-12 season at 37,700 tons, with an average price of \$775 per ton. Based on the average price and shipment information provided by the CASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. Based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, average annual grower revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2013-14 and subsequent fiscal years from \$0.035 to \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2013-14 expenditures of \$113,550 and an assessment rate of \$0.025 per 9-kilo volume-fill container. The assessment rate of \$0.025 is \$0.010 lower than the 2012-13 rate. The quantity of assessable kiwifruit for the 2013-14 fiscal year is estimated at 2,600,000 9-kilo volume-fill containers. Thus, the \$0.025 rate should provide \$65,000 in assessment income and when combined with carry-in funds and interest income, should be adequate to meet this year's expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like

all Committee meetings, the July 11, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before November 22, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

[http://www.regulations.gov/#!documentDetail;D=AMS\\_FRDOC\\_0001-1100](http://www.regulations.gov/#!documentDetail;D=AMS_FRDOC_0001-1100).

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S. C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 62959, October 23, 2013), will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

**PART 920 - KIWIFRUIT GROWN IN CALIFORNIA**

Accordingly, the interim rule amending 7 CFR part 920, which was published at 78 FR 62959 on October 23, 2013, is adopted as final without change.

Dated: January 31, 2014

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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